

**Introduced by Senator Chesbro**

February 20, 2004

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An act to amend Sections 10136, 10138, 10139, ~~10139.1~~, and 10139.5 of the Insurance Code, relating to ~~insurance~~ *structured settlements*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1680, as amended, Chesbro. Insurance: structured settlements.

*Existing law provides that no transfer of structured settlement payment rights, as defined, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, unless specified conditions are satisfied.*

*Existing law requires a transferee of structured settlement payment rights to provide the payee with a written disclosure statement containing certain information.*

*This bill would make specified changes to the requirements regarding this disclosure statement.*

*Existing law requires that the transferee of structured settlement payment rights provide written notice of a proposed transfer to all interested parties at certain times, except as specified.*

*This bill would eliminate this requirement.*

*Existing law requires a transferee of structured settlement payment rights to file specified documents with the Attorney General, and requires the Attorney General to review a transfer agreement to ensure*

*that the agreement complies with the provisions of law applicable to these agreements.*

*This bill would provide that these requirements do not apply to a payee who is not a resident of California at the time the payee executes the transfer agreement.*

*Existing law, effective until January 1, 2005, provides that a transfer of structured settlement payment rights is not effective unless the transfer has been approved in advance in a final court order based on certain findings. Existing law requires a transferee, at or before the time of filing a petition for court approval, to advise the payee of the payee's right to seek counsel in connection with the petition, and that the transferee shall pay the fees of the payee's counsel, up to a specified amount.*

*This bill would delete the expiration date for these provisions. It would require the transferee, in addition to advising the payee with respect to counsel as provided above, to advise the payee of his or her right to seek financial advice in connection with the petition for court approval, and that the transferee will pay the fees of the payee's accountant or actuary, up to a specified aggregate amount.*

*Existing law allows a payee under a structured settlement transfer agreement to cancel the agreement at any time prior to the date on which the agreement becomes binding on the payee.*

*This bill would instead allow the payee to cancel the agreement at any time before the date on which a court enters a final order approving the transfer agreement.*

*Existing law requires a transferee of structured settlement payment rights to file with the Attorney General a copy of any final court order approving or denying the transfer. Existing law requires the Attorney General, not later than March 31, 2004, to file a report with the Legislature to assist in the evaluation of the provisions of law regarding transfers of structured settlement payment rights, as specified.*

*This bill would eliminate these requirements.*

~~Existing law permits a judgment awarded by a court for damages for personal injury in resolution of a tort claim, or an award for permanent disability for personal injuries subject to the workers' compensation law, to be paid in periodic payments rather than a lump-sum payment, which is known as a structured settlement. Existing law requires a transfer of structured settlement payment rights entered into on or after January 1, 2000, by a payee either domiciled in California or entitled to receive payments funded by an insurance contract issued by an~~



~~insurer domiciled in, or owned by an insurer or corporation domiciled in, California to comply with specified requirements, including disclosure requirements. Existing law requires a copy of a transfer agreement to be filed with the Attorney General. Existing law provides that, until January 1, 2005, a transfer is not effective unless it has been approved in a final court order, and requires that, following a transfer, certain requirements be met, including a requirement that a transferee advise the payee of a right to seek counsel and that the transferee will pay the counsel's fee regardless of whether the agreement is approved. Existing law also requires, until January 1, 2005, that a transferee file a copy of the final court approval and other specified information with the Attorney General to within 30 days of obtaining final court approval, and requires the Attorney General to file a report, by March 31, 2004, with the Legislature to assist in the evaluation of the impact of these requirements.~~

~~This bill would delete the application of these provisions to a transfer by a payee who is not domiciled in California. The bill would require disclosure of the total amount the payee would receive under the settlement in the absence of the transfer. The bill would delete the January 1, 2005, repeal date for specified provisions. The bill would also require transferees to disclose that they will pay fees for a licensed certified public accountant or actuary and that payment of the professional is regardless of whether the professional files any document or appears at the hearing. The bill would delete the requirement that a transferee file a copy of the final court approval with the Attorney General within 30 days of obtaining final court approval and the requirement that the Attorney General file a report with the Legislature.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10136 of the Insurance Code is
- 2 amended to read:
- 3 10136. (a) No transfer of structured settlement payment
- 4 rights, either directly or indirectly, shall be effective by a payee
- 5 domiciled in this state, *or by a payee entitled to receive payments*
- 6 *under a structured settlement funded by an insurance contract*
- 7 *issued by an insurer domiciled in this state or owned by an insurer*

1 *or corporation domiciled in this state*, and no structured settlement  
2 obligor or annuity issuer shall be required to make any payment  
3 directly or indirectly to a transferee, unless all of the following  
4 requirements are met:

5 ~~(a) Ten or more days prior to the effective date of a transfer~~

6 *(1) Ten or more days before the payee executes a transfer*  
7 *agreement, the transferee provides the payee with a separate*  
8 *written disclosure statement, in at least 14-point boldface type,*  
9 *disclosing all of the following information:*

10 ~~(1) The effective date of the transfer.~~

11 ~~(2) :~~

12 *(A) A statement that the agreement is not effective until the date*  
13 *on which a court enters a final order approving the transfer*  
14 *agreement and that payment to the payee under the transfer*  
15 *agreement will be delayed up to 30 days or more after the date the*  
16 *payee signed the transfer agreement in order for the court to review*  
17 *and approve the transfer agreement.*

18 *(B) The amounts and due dates of the structured settlement*  
19 *payments to be transferred.*

20 ~~(3)~~

21 *(C) The aggregate amount of the structured settlement*  
22 *payments to be transferred.*

23 ~~(4)~~

24 *(D) The gross amount of all expenses, if any, to be deducted*  
25 *from the amount to be paid to the payee in exchange for the*  
26 *payments to be transferred.*

27 ~~(5)~~

28 *(E) The amount payable to the payee, net of all expenses, in*  
29 *exchange for the payments to be transferred, and the total amount*  
30 *that and the total amount the payee would receive under the*  
31 *structured settlement in the absence of the transfer.*

32 ~~(6)~~

33 *(F) The discounted present value of all structured settlement*  
34 *payments to be transferred and the discount rate used in*  
35 *determining that discounted present value.*

36 ~~(7)~~

37 *(G) The effective equivalent interest rate, which shall be*  
38 *disclosed in the following statement:*

39

1 “YOU WILL BE PAYING THE EQUIVALENT TO AN  
2 INTEREST RATE OF \_\_\_\_ % PER YEAR.

3  
4 Based on the net amount that you will receive from us and the  
5 amounts and timing of the structured settlement payments that you  
6 are transferring to us, if the transferred structured settlement  
7 payments were installment payments on a loan, with each payment  
8 applied first to accrued unpaid interest and then to principal, it  
9 would be as if you were paying interest to us of \_\_\_\_ % per year,  
10 assuming funding on the effective date of transfer.”

11 ~~(8)~~

12 (H) The quotient (expressed as a percentage) obtained by  
13 dividing the net payment amount by the discounted present value  
14 of the payments.

15 ~~(9)~~

16 (I) A statement that the payee should obtain independent  
17 professional advice regarding any federal and state income tax  
18 consequences arising from the proposed transfer, and that the  
19 transferee may not refer the payee to any specific adviser for that  
20 purpose.

21 ~~(10)~~

22 (J) A statement of the payee’s irrevocable and nonwaivable  
23 right of rescission pursuant to ~~paragraph (2)~~ of subdivision (b).

24 ~~(11)~~

25 (K) The following statement in capital letters: “IF YOU  
26 BELIEVE YOU WERE TREATED UNFAIRLY OR WERE  
27 MISLED AS TO THE NATURE OF THE OBLIGATIONS YOU  
28 ASSUMED UPON ENTERING INTO THIS AGREEMENT,  
29 YOU SHOULD REPORT THOSE CIRCUMSTANCES TO  
30 YOUR LOCAL DISTRICT ATTORNEY OR THE OFFICE OF  
31 THE ATTORNEY GENERAL.”

32 ~~(12)~~

33 (2) If court approval of the transfer agreement is required, all  
34 of the following shall apply:

35 (A) The effective date of the transfer agreement shall be  
36 deemed to be the date that the agreement was signed by the payee.

37 (B) The payee shall be advised that payment to the payee  
38 pursuant to the transfer agreement is contingent upon court  
39 approval of the transfer agreement.

(C) The payee shall be advised that payment to the payee pursuant to the transfer agreement will be delayed up to 30 days or more in order for the court to review and approve the transfer agreement.

No contract for the transfer of structured settlement payment rights shall be valid unless the seller has separately acknowledged that he or she has read all of the disclosures required by this subdivision.

~~(b) (1) The transferee provides written notice of the proposed transfer to all other interested parties 10 or more days prior to the date specified in the transfer agreement as the date on which the transfer agreement first becomes effective and 60 or more days prior to the date on which the first payment is due under a schedule established by the structured settlement agreement.~~

~~Notice shall not be required by this paragraph if court approval of the transfer is required and notice is given pursuant to paragraph (6) of subdivision (c) of Section 10139.5.~~

~~(2) At any time prior to the date on which the transfer agreement first becomes effective, the payee may cancel the transfer agreement without cost or further obligation, by providing written notice of cancellation to the transferee.~~

~~(3) The notice to interested parties shall include the effective date of the transfer and identify the structured settlement payment rights being transferred and the due dates of those payments.~~

~~(4) A notice required by this subdivision shall be deemed to have been given if addressed to the recipient's last known address and deposited, first-class postage prepaid, in the United States mail not less than five calendar days prior to the date on which the notice is required to be provided.~~

~~(e)~~

(3) The contract for transferring the structured settlement payment rights does not violate the provisions of Section 10138.

*(b) At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee.*

SEC. 2. Section 10138 of the Insurance Code is amended to read:

1 10138. (a) A transfer agreement, as defined in subdivision  
2 (o) of Section 10134, shall not include any provision described in  
3 the paragraphs below. Any inclusion of a prohibited provision,  
4 *with respect to a seller who is a California resident*, shall make the  
5 contract void and unenforceable.

6 (1) ~~Any~~ Any provision that waives the seller's right to sue under  
7 any law, or in which the seller agrees not to sue, or that waives  
8 jurisdiction or standing to sue under the contract.

9 (2) ~~Any~~ Any provision that requires the seller to indemnify and  
10 hold harmless the buyer, or to pay the buyer's costs of defense, in  
11 any claim or action brought by the seller or on the seller's behalf  
12 contesting the sale for any reason.

13 (3) ~~Any~~ Any provision that waives benefits or rights conferred by  
14 law with respect to garnishment of wages.

15 (4) ~~Any~~ Any provision providing that the contract is confidential  
16 or proprietary, belonging to the buyer.

17 (5) ~~Any~~ Any provision in which the seller stipulates to a  
18 confession of judgment.

19 (6) ~~Any~~ Any provision requiring the seller to pay the buyer's  
20 attorney's fees and costs if the purchase agreement is not  
21 completed.

22 (7) ~~Any~~ Any provision requiring the seller to pay any tax liability  
23 arising under the federal tax laws, other than the seller's own tax  
24 liability, if any, that results from the transfer.

25 (8) ~~Any~~ Any provision providing for brokerage fees incurred in  
26 the contract to be deducted from the purchase price disclosed  
27 pursuant to paragraph (5) of subdivision (a) of Section 10136.

28 (9) ~~Any~~ Any forum selection provision providing for jurisdiction  
29 to be in a court outside of California for any action arising under  
30 the contract.

31 (10) ~~Any~~ Any choice-of-law provision that provides for  
32 controlling law to be other than California law in any action arising  
33 under the contract.

34 (11) A provision that provides the transferee with a security  
35 interest or collateral interest in any structured settlement payment  
36 rights that exceed the actual dollar amount of the structured  
37 settlement payment rights being transferred.

38 (12) ~~Any~~ Any provision that creates a "buyer's first right of  
39 refusal" to purchase any remaining structured payment rights that  
40 the payee may desire to sell in the future.



(b) The provisions in this section may not be waived by agreement of the parties.

SEC. 3. Section 10139 of the Insurance Code is amended to read:

~~10139. (a) At the time notice is provided to interested parties pursuant to subdivision (b) of Section 10136, or subdivision (c) of Section 10137, or, when applicable, at the time of filing a petition pursuant to paragraph (5) of subdivision (e) of Section 10139.5 for court approval when court approval of the transfer agreement is required, the transferee of an initial transfer from a payee shall file with the Attorney General all of the following:~~

~~(1) A copy of the transferee's petition for approval.~~

~~(2) A copy of the written disclosure statement required by subdivision (a) of Section 10136.~~

~~(3) A copy of the transfer agreement as defined in subdivision (o) of Section 10134.~~

~~(4) A copy of the annuity contract.~~

~~(5) A copy of any qualified assignment agreement.~~

~~(6) A copy of the underlying structured settlement agreement.~~

~~(7) A copy of any order or approval of any court or responsible administrative authority authorizing or approving the structured settlement.~~

~~(8) A copy and proof of notice to the interested parties.~~

~~(9) A verified statement from the transferee stating that all of the conditions set forth in Sections 10136, 10137, and 10138 have been met.~~

*10139. (a) At the time of filing a petition pursuant to Section 10139.5 for court approval, the transferee shall file with the Attorney General a copy of the transferee's petition for approval, a copy of the written disclosure statement required by subdivision (a) of Section 10136, a copy of the transfer agreement as defined in subdivision (o) of Section 10134, a copy of the annuity contract, a copy of any qualified assignment agreement, a copy of the underlying structured settlement agreement, a copy of any order or approval of any court or responsible administrative authority authorizing or approving the structured settlement, a copy and proof of notice to the interested parties, and a verified statement from the transferee stating that all of the conditions set forth in Sections 10136, 10137, and 10138 have been met.*



(b) The Attorney General may, but is not required to, review any transfer agreement in order to ensure that the transfer meets the requirements of this article.

(c) The Attorney General may charge a reasonable fee for the filing of the transfer agreement as provided in this section. The fee shall be paid by the transferee.

~~SEC. 4. Section 10139.1 of the Insurance Code is amended to read:~~

~~10139.1. Except for the filing of documents with the Attorney General, any subsequent transfer of any additional structured settlement payments between the payee and transferee may be made only after compliance with all of the requirements of this article.~~

~~SEC. 5.~~

*(d) This section does not apply to a transfer by a payee who is not a resident of California at the time the payee executes the transfer agreement.*

~~SEC. 4. Section 10139.5 of the Insurance Code is amended to read:~~

~~10139.5. (a) This section shall become operative only upon enactment into law of amendments to the Federal Internal Revenue Code to impose an excise tax on a transfer of structured settlement payment rights if the transfer is not approved by a court.~~

~~(b)~~

10139.5. (a) A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing.

(3) The transferee has provided the payee with a disclosure form consistent with Section 10136 and the transfer agreement complies with Section 10138.

(4) The transfer does not contravene any applicable statute or the order of any court or other government authority.

~~(e)~~

(b) Following a transfer of structured settlement payment rights under this article:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer if the transfer contravenes the terms of the structured settlement for the following:

(A) Any taxes incurred by those parties as a consequence of the transfer.

(B) Any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this article.

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two, or more, transferees or assignees.

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this article.

~~(5)~~

(c) (1) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee and brought in the county in which the payee resides ~~if the payee is a resident of California.~~

~~(6)~~

(2) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, and shall include ~~all of the following~~ with that notice:

(A) A copy of the transferee's application.

(B) A copy of the transfer agreement.

(C) A listing of each of the payee's dependents, together with each dependent's age.

1 (D) A copy of the disclosure required in subdivision (a) of  
2 Section 10136.

3 (E) A copy of the annuity contract.

4 (F) A copy of any qualified assignment agreement.

5 (G) A copy of the underlying structured settlement agreement.

6 (H) Notification that any interested party is entitled to support,  
7 oppose, or otherwise respond to the transferee's application, either  
8 in person or by counsel, by submitting written comments to the  
9 court or by participating in the hearing.

10 (I) Notification of the time and place of the hearing and  
11 notification of the manner in which and the time by which written  
12 responses to the application must be filed, which may not be less  
13 than 15 days after service of the transferee's notice, in order to be  
14 considered by the court.

15 ~~(7)~~

16 (d) All court costs and filing fees shall be paid by the transferee.

17 ~~(8)~~

18 (e) No later than the time of filing the petition for court  
19 approval, the transferee shall advise the payee of the payee's right  
20 to seek counsel *and financial advice* in connection with the  
21 transferee's petition for court approval of the transfer agreement,  
22 and shall further advise the payee that if the payee retains counsel  
23 ~~or a licensed certified public accountant or licensed actuary in~~  
24 ~~connection with a petition for an order approving the transfer~~  
25 ~~agreement, that the transferee shall pay the payee's counsel's fees,~~  
26 ~~or accountant or actuary fees, regardless of whether the transfer~~  
27 ~~agreement is approved and regardless of whether the attorney,~~  
28 ~~certified public accountant, or actuary files any document or~~  
29 ~~appears at the hearing in the application for transfer, in an amount~~  
30 ~~not to exceed one thousand, a licensed certified public accountant,~~  
31 ~~or a licensed actuary in connection with a petition for an order~~  
32 ~~approving the transfer agreement, that the transferee shall pay the~~  
33 ~~fees of the payee's counsel, accountant, or actuary, regardless of~~  
34 ~~whether the transfer agreement is approved, and regardless of~~  
35 ~~whether the attorney, accountant, or actuary files any document or~~  
36 ~~appears at the hearing on the application for transfer, in an~~  
37 ~~aggregate amount not to exceed one thousand five hundred dollars~~  
38 (\$1,500).

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2	CORRECTIONS
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